

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

ERIN FOLEY,

Defendant.

SUPERSEDING INFORMATION

S3 23 Cr. 664 (JGK)

COUNT ONE

**(Conspiracy to Commit Health Care Fraud, Wire Fraud, and
to Violate the Anti-Kickback Statute)**

The Acting United States Attorney charges:

1. From at least in or about 2016 through in or about 2021, in the Southern District of New York and elsewhere, ERIN FOLEY, the defendant, and others known and unknown, willfully and knowingly combined, conspired, confederated, and agreed together and with each other to commit an offense against the United States, to wit, (i) health care fraud, in violation of Title 18, United States Code, Section 1347, (ii) wire fraud, in violation of Title 18, United States Code, Section 1343, and (iii) violations of the Anti-Kickback Statute, in violation of Title 42, United States Code, Section 1320a-7(b)(1)(B).

2. It was a part and object of the conspiracy that ERIN FOLEY, the defendant, together with others known and unknown, knowingly and willfully, would and did execute, and attempt to execute, a scheme and artifice to defraud a health care benefit program and to obtain, by means of false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, a health care benefit program, as that term is defined in Title 18, United States Code, Section 24(b), in connection with the delivery of and

payment for health care benefits, items, and services, to wit, FOLEY and others engaged in a scheme to buy and sell fraudulently obtained prescriptions for durable medical equipment (“DME”), and to use those prescriptions to cause Medicare to pay for fraudulent claims filed by a medical billing company (“Billing Company-1”), in violation of Title 18, United States Code, Section 1347.

3. It was a further part and object of the conspiracy that ERIN FOLEY, the defendant, together with others known and unknown, knowingly having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, would and did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, to wit, FOLEY and others engaged in a scheme to buy and sell fraudulently obtained DME prescriptions, and to use those prescriptions to cause Medicare to pay for fraudulent claims filed by Billing Company-1, and sent and received, and caused others to send and receive, emails and other interstate wires to and from the Southern District of New York and elsewhere, in furtherance of that scheme, in violation of Title 18, United States Code, Section 1343.

4. It was a further part and object of the conspiracy that ERIN FOLEY, the defendant, and others known and unknown, willfully and knowingly would and did solicit and receive remuneration (including kickbacks, bribes, and rebates), directly and indirectly, overtly and covertly, in cash and in kind, in return for purchasing, leasing, ordering, and arranging for and recommending purchasing, leasing, and ordering any good, facility, service, and item for which payment may be made in whole and in part under a Federal health care program, in violation of

Title 42, United States Code, Section 1320a-7b(b)(1)(B), to wit, FOLEY and others bought and sold DME prescriptions, which were fraudulently billed to Medicare.

Overt Acts

5. In furtherance of the conspiracy and to effect its illegal objects, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. In or about August 2016, ALAN SWISS, the co-defendant of ERIN FOLEY, the defendant, established Tropical Marketing.

b. In or about December 2018, SWISS caused Tropical Marketing to transmit multiple wire transfers totaling more than \$65,000 to a company that supplied Tropical Marketing with purported signatures of medical providers for DME orders.

c. In or about March 2019, SWISS caused Tropical Marketing to transmit multiple wire transfers totaling more than \$40,000, and caused A&E Medical to transmit multiple wire transfers totaling more than \$11,000, to a company that supplied Tropical Marketing and A&E Medical with purported signatures of medical providers for DME orders.

d. On or about August 28, 2019, a Grapevine employee sent an email to a DME supply company in New York, New York (the “Manhattan DME Supplier”) and to two persons who ran a business (“Seller Company-1”) that repeatedly sold DME orders to the Manhattan DME Supplier, copying ERIN FOLEY, the defendant, and TED ALBIN, the co-defendant of FOLEY, stating, in substance and in part, that the Manhattan DME Supplier had “paid for 65 good leads with the an [*sic*] agreement to replace any NOGO leads” but had received only 45 good leads, and that Seller Company-1 “still needs to replace 20 leads,” which referred to DME orders.

e. On or about December 27, 2019, FOLEY sent an email to the Manhattan DME Supplier, copying two other recipients who regularly sold DME orders, introducing the owner of the Manhattan DME Supplier to one of the other recipients of that email (“Seller-1”). The email informed the owner of the Manhattan DME Supplier that Seller-1 “has orthotic marketing that you may be interested in.” In truth and in fact, “marketing” was a code phrase that FOLEY and her co-conspirators regularly used to refer to DME orders.

f. On or about December 27, 2019, FOLEY sent an electronic text message to Seller-1, stating in substance and in part that FOLEY had “just introduced you” to a person who would need “leads,” adding, “My DME is called Priority, can you send me 1-2 a day please?”

(Title 18, United States Code, Section 371.)

FORFEITURE ALLEGATIONS

6. As a result of committing the health care fraud and Anti-Kickback Statute offenses charged in Count One of this Information, ERIN FOLEY, the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(7), any and all property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of said offenses, including but not limited to a sum of United States currency representing the amount of proceeds obtained as a result of the offenses.


7. As the result of committing the wire fraud offense charged in Count One of this Information, ERIN FOLEY, the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), any and all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of said offenses, including but not limited to a sum of money in United States currency representing the amount of proceeds traceable to the commission of said offenses.

Substitute Assets Provision

8. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third person;
- (c) has been placed beyond the jurisdiction of the Court;
- (d) has been substantially diminished in value; or
- (e) has been commingled with other property which cannot be subdivided without difficulty; it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p) and Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of the defendant up to the value of the above forfeitable property.

(Title 18, United States Code, Sections 981 and 982;
Title 21, United States Code, Section 853; and
Title 28, United States Code, Section 2461.)


MATTHEW PODOLSKY
Acting United States Attorney